The European Union's trade disputes. The case of energy sector

Stefan-Catalin TOPLICEANU*

Abstract

Although there are some issues and concerns about the World Trade Organization dispute settlement system, it remains an effective tool for countries to find reasonable solutions for their trading problems. This paper aims to identify the mechanisms of the settlement process between WTO members and to provide a relevant review of the European Union's trade disputes, in particular for energy sector cases. For this purpose, the paper implies a conceptual and descriptive framework and a qualitative approach regarding the EU's trade disputes, especially for energy sector. The results show that the EU is one of the most frequent members in trade disputes, but most of them are concluded. At the same time, most of the cases in the energy sector remain in the consultation phase, the EU being complained by Argentina, Indonesia, Russia, China and Malaysia for sectors related to biodiesel, renewable energy generation and oil palm-based biofuels.

Keywords: energy crisis, WTO dispute settlement, oil trade, Russian fuels, renewable energy

Introduction

The General Agreement on Tariffs and Trade (GATT) defines the rules of the world trade since its foundation in 1948, even if the World Trade Organization (WTO) succeeded it in 1995. The current dispute settlement system (known as Dispute Settlement Understanding and abbreviated-DSU) is an effective mechanism in order to achieve reconciliation between member states of the WTO in terms of trade. This system was established during the Uruguay Round of multilateral trade negotiations in order to prevent unresolved trade disputes and to reduce the imbalances between developed countries and developing ones. Generally, a trade dispute starts when one member adopts trade measures considered improper with WTO rules by one or more other members. Only the WTO member states can participate in the dispute settlement system either as parties or as third parties. There are three important players in the trade dispute settlement, namely the complainant, the respondent and the third party. The complainant is the country that initiates the consultations, while the respondent is the member that is called upon to consult on a trade dispute. A WTO member can be a third party to a trade dispute as long as it has a substantial trade interest in the case. In this situation, the third party may be present at the discussions on any mutually agreed solution if such an outcome affects its

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interest. Even if companies, people or non-governmental organizations are the most affected by trade measures, they do not have access to this system. However, they can influence and request from a member state to start a dispute. The dispute settlement system is compulsory for each WTO member following the signing of the WTO accession agreement, while both parties involved in a trade dispute must accept any rulings taken because of the reconciliation process as binding (WTO Secretariat, 2017; Madhumitha, 2020).

Since 1995, WTO managed more than 615 trade disputes, while more than 110 members have been involved in dispute settlement as a major party or a third party. At the same time, more than 140 cases reached a mutually agreed solution or the complainant withdrawn the consultations request. On the other hand, when parties had been unable to reach a mutually agreed solution, a panel had been established, being the case of 316 disputes (almost 51% of all disputes initiated). This led to 202 panel reports adopted, whereas the number of Appellate Body reports adopted had exceeded 120 cases. In addition, between 2020 and 2023, the WTO members have initiated less than 10 trade disputes each year by requesting for consultation, whereas the annual average of mutually agreed solutions was four cases (WTO, 2023a).

The purpose of this article is to identify the mechanisms through which WTO manages the settlement process of trade disputes between member states and to provide a relevant review of the EU's trade disputes since WTO replaced GATT in 1995, in particular for energy sector cases.

Energy became an important and priority theme for the EU member states starting with the 1970s, more precisely because of the first oil crisis that happened between 1973 and 1974. Since there, the EU made great efforts and large progress, while the single market of the EU was able to provide energy access to all producers and customers. Moreover, the EU has a particular interest for a sustainable use of energy, while the energy supply remained one of the most urgent challenges, especially in times of war and uncertainty such as the Ukrainian war.

The energy crisis triggered in the EU by the war between Russia and Ukraine has the potential to generate multiple economic effects on European economies, especially in terms of energy supplies. The EU countries are facing a new challenge, designed to test their energy dependence on major external energy suppliers and the vulnerability of their trade relations with these suppliers. In this respect, the EU is making continuous efforts and has made great progress in energy access and sustainable energy use.

The paper structure is as follows. The next section presents the literature review regarding the positive impact of the WTO, the main problems of the dispute settlement, possible alternatives, and other studies related to the EU trade disputes. The second section provides a conceptual and

descriptive framework framework regarding the dispute settlement process. The last two parts focus on the EU's trade disputes so far and, in particular, on energy sector. Finally, the conclusions are presented.

1. Literature review

The WTO's positive impact on trade is well known, considering the successfully reduced tariffs and trade barriers, promoting multilateralism and market competition, the reconciliation of trade disputes, and a more transparent, secure and predictable trade environment (Gil-Pareja *et al.*, 2016; Bown and Keynes, 2020; Madhumitha, 2020). Gallardo-Salazar and Tijmes-Ihl (2021) have highlighted the WTO dispute settlement's unique attributes regarding the legitimacy of multilateralism, the technical support offered by the Secretariat, and the mechanism to balance power differences among disputing parties. However, these institutional strengths are minimized in times of functional crisis. Shin and Ahn (2019) have suggested that WTO dispute settlement system contributes to multilateral trade liberalization and provides better market access. Reynolds (2009) have stated that the WTO dispute settlement is more effective than we thought, although there are many trade disputes inactive. In fact, these cases are initiated by countries involved in similar disputes and the WTO took no further action.

Despite its contribution, many scholars have stated that the WTO dispute settlement has some systematic and legitimacy problems in terms of panel competence, transparency, cases reported undecided, the compliance with deadlines and their extended, and consistency between domestic legislation and WTO regulations. Moreover, they have mentioned the existence of an imbalance between the benefits to developed countries and those to less developed countries, to the extent that the latter had a weaker capacity to threaten tariff or non-tariff retaliation (Elsig *et al.*, 2012; Singh and Tara, 2019; Bown and Keynes, 2020; Madhumitha, 2020; Altemoller, 2021). At the same time, the functioning of the WTO dispute settlement can be disturbed by various events, such as the Appellate Body crisis, started in December 2019 (Bown and Keynes, 2020; Raj and Mohan, 2021).

In the context of malfunctioning or collapses of the Appellate Body, both policymakers and scholars came with alternative dispute settlements (Lo *et al.*, 2020; Gao, 2021; Papaconstantinou and Pedreschi, 2022; Singh, 2022; Miranda and Miranda, 2023). The trade partners must focus on dispute settlement mechanisms within free or preferential trade agreements, as potential alternatives to the multilateral mechanism. At the same time, some of the WTO members had accepted the EU's proposal for the Multiparty Interim Appeal Arbitration Arrangement (MPIA) as an alternative. Gallardo-Salazar and Tijmes-Ihl (2021) have compared the Pacific Alliance (PA), and the Comprehensive and the Progressive

Agreement for Trans-Pacific Partnership (CPTPP) as alternatives to WTO dispute settlement. They have suggested that PA and CPTPP offer incentives for countries to choose them for trade disputes instead of WTO. Both regional forums can guarantee the same great degree of legal certainty as WTO when the WTO encounters functional difficulties or crises. In addition, PA and CPTPP have an extended scope of application, are more flexible regarding the dispute settlement procedures and have an automatic system in the non-compliance stage facilitating the suspension process of concessions.

As regards the European Union (EU), Mayr *et al.*, (2021) have analyzed how the EU's Renewable Energy Directive complies with WTO/GATT provisions, suggesting that there are some critical aspects regarding this compatibility and doubting the justification of the European measures on environmental grounds. At the same time, Rovnov (2021) and Dolle and Medina (2020) have reviewed the dispute case between the EU and Ukraine regarding the Ukraine's exports restrictions on timber and unprocessed wood. This case is special because considers a bilateral preferential trade agreement within the Association Agreement between the EU and Ukraine, being the first trade dispute of this kind. On the other hand, Kastner and Pawsey (2002) have investigated the dispute between the EU and the United States on American exports of hormone-treated beef within the WTO-SPS Framework. At the same time, Raju (2019) has presented six WTO disputes, including the case DS593 between Indonesia and the EU on palm oil and oil palm crop-based biofuels Yildrim (2018) has suggested that the behavior of the EU towards WTO disputes depends on the level of integration of targeted sectors into global value chains. In this sense, either the EU responds within a short timeframe to the demands of its trading partners; or the EU postpones the resolution of some disputes.

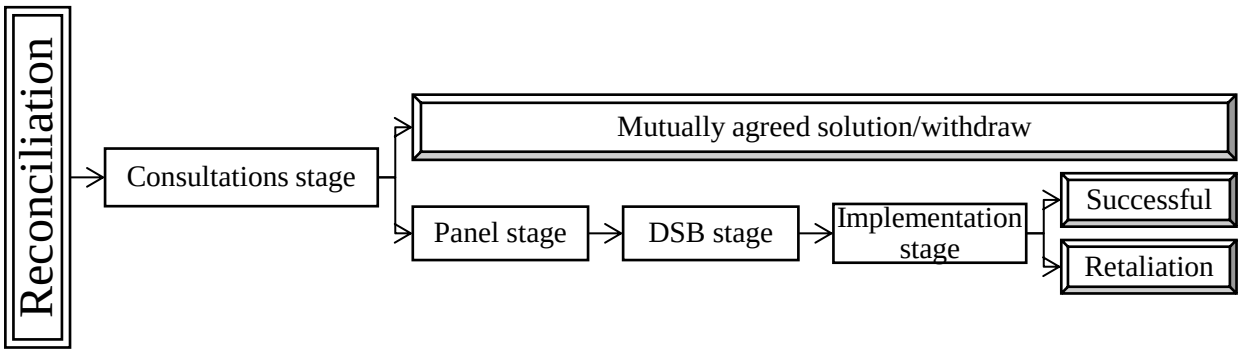
The research methodology implies a conceptual and descriptive framework regarding the dispute settlement process and a qualitative approach regarding the status of the European Union's trade disputes, in particular for energy sector. The research is based on practically informed findings resulted through authors' professional experience and consultation of the literature, mainly primary sources. A review of this topic is important and necessary in order to create further directions of study and new approaches regarding trade disputes and the WTO settlement process for understanding the implications of this process between WTO members, and, in particular, for the EU member states in terms of energy.

2. The dispute settlement process

The dispute settlement process between member states can go through several stages according to Figure 1. The main purpose of the dispute settlement system is to help the member states to achieve

reconciliation between themselves based on WTO rules. Therefore, *the first stage of the reconciliation process is bilateral consultations between the parties*. Using this system, WTO is looking to reconcile the member states through a mutually agreed solution in accordance with international rules rather than to pronounce judgments. According to Article 4.5 of the DSU, parties have the opportunity to find together an advantageous solution for both without employing to judicial proceedings (WTO Secretariat, 2012).

Figure 1. Overview of the reconciliation process



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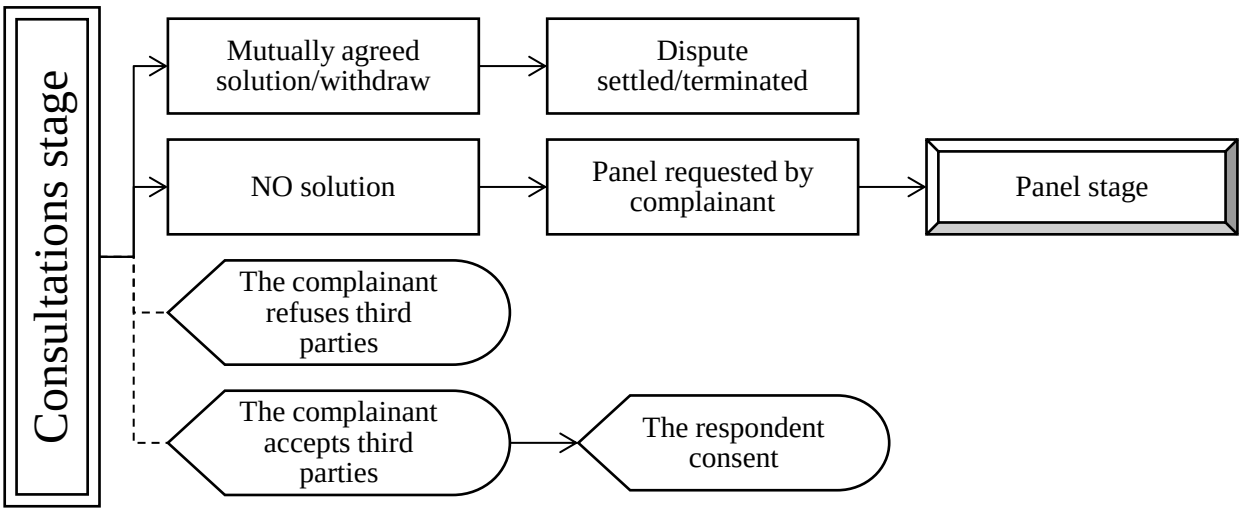
This is an effective tool of dispute resolution, considering that most of disputes are finished in the consultation stage due to a mutually solution or due to the withdrawal of the complaint. In more than 140 cases, both parties reached a mutually agreed solution or the complainant withdrawn the consultations request (WTO, 2023). This suggests that consultations are a more effective instrument than juridical proceedings and enforcement. In fact, the primary objective of WTO is that parties to reach a mutually solution regardless the stage of dispute settlement process. For this purpose, WTO provides assistance through good offices, conciliation and mediation at any time if the involved parties accept this proposal (WTO Secretariat, 2017).

Only if the parties cannot reach a mutually agreed solution after formal consultations facilitated by DSU within 60 days or if both parties consider that consultations are not enough for a solution, the complainant has the option to request a panel for judging that case by sending a single text to the WTO Secretariat (Article 4.7). This term can be even shorter in cases of urgency or for perishable goods (Article 4.8). Even so, parties have always the possibility to find a mutually solution during the dispute settlement process (WTO Secretariat, 2012; Madhumitha, 2020). The complainant has the possibility to accept the access of other third parties or to refuse it when he requests for consultations. On the other hand, the respondent must give his consent for the participation of third parties.

Therefore, another WTO member may join consultations if he has the consent of both parties and if he has a trade interest (WTO Secretariat, 2017). Figure 2 represents the entire procedure for this stage.

Figure 2. Reconciliation process. Consultations stage



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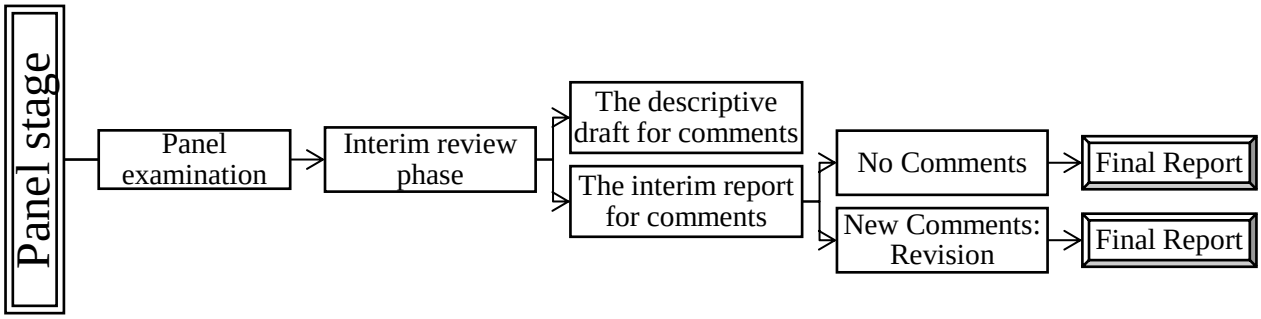
The refereeing stage starts with the request for panel. *In the panel stage*, both parties have the possibility to uphold or defend their interests, while the complainant can also request the panel suspension for a maximum of one year hoping to find a mutually solution. For this stage, other members can participate as third parties in the panel proceedings based on a substantial or systematic interest and without needing the consent of the parties' involved (WTO Secretariat, 2017). Generally, a panel is composed of three or five governmental and non-governmental individuals that must meet several conditions mentioned in Article 8.1 and 8.2 of the DSU. Persons that belong to a party involved or to a third party has the opportunity to be panelist only with the parties consent (Article 8.3). Moreover, in trade disputes between a developed country and a developing one, the last can request a person from a developing country to be part of the panel, according to the Article 8.10 of the DSU (WTO Secretariat, 2012).

After the panel examines the involved parties and third parties in accordance with the existing WTO law through several meetings, including oral statements, he prepares a descriptive draft with the involved parties' arguments. In this preliminary stage, the involved parties have two weeks to form remarks. After this term, the panel composes an interim report, including the revised descriptive part, findings and possible recommendations. Again, the involved parties have the possibility to request a review of certain aspects from the report or a new meeting of the panel. After this revision

phase, the panel presents the final report to the parties in at most six months or within three months in cases of urgency (WTO Secretariat, 2017; Madhumitha, 2020). The entire procedure for panel stage is presented in Figure 3. So far, since 1995, the panel had been established for 316 cases, while the panelists have been selected for 282 cases (WTO, 2023).

Figure 3. Reconciliation process. Panel stage



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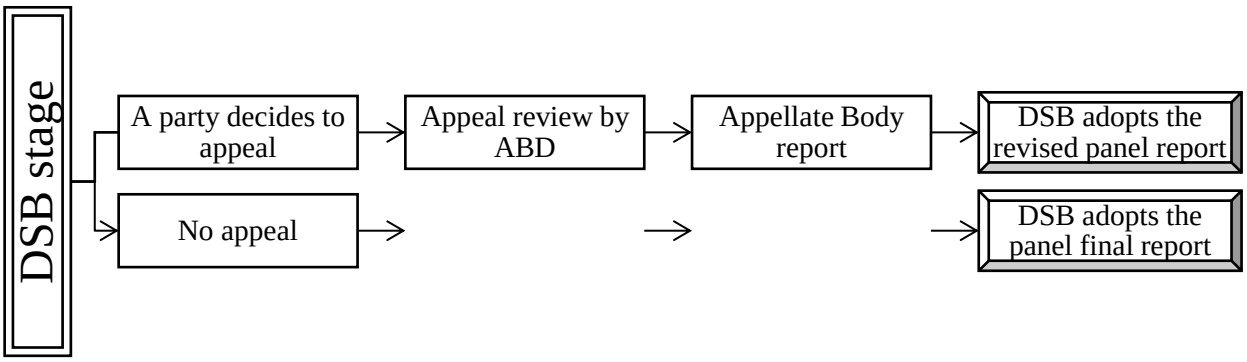
However, the final report becomes mandatory after the Dispute Settlement Body (DSB) approval. *In the DSB stage* (Figure 4), each party in the dispute has the opportunity to appeal regarding legal aspects covered by the panel final report (Article 16 of the DSU). The appeal is limited to law issues and interpretations and is not taking into consideration new evidences. A division of three members from the Appellate Body (ABD) examines the appeal through a short oral hearing, those being selected by rotation regardless national origin. After the appeal has been resolved, the DSB adopts the final report. In the absence of an appeal, the report is adopted within 60 days and passes directly in the implementation phase. Starting from this point, the parties in the dispute must unconditionally accept the report (WTO Secretariat, 2012; Bown and Keynes, 2020).

Figure 4. Reconciliation process. DSB stage



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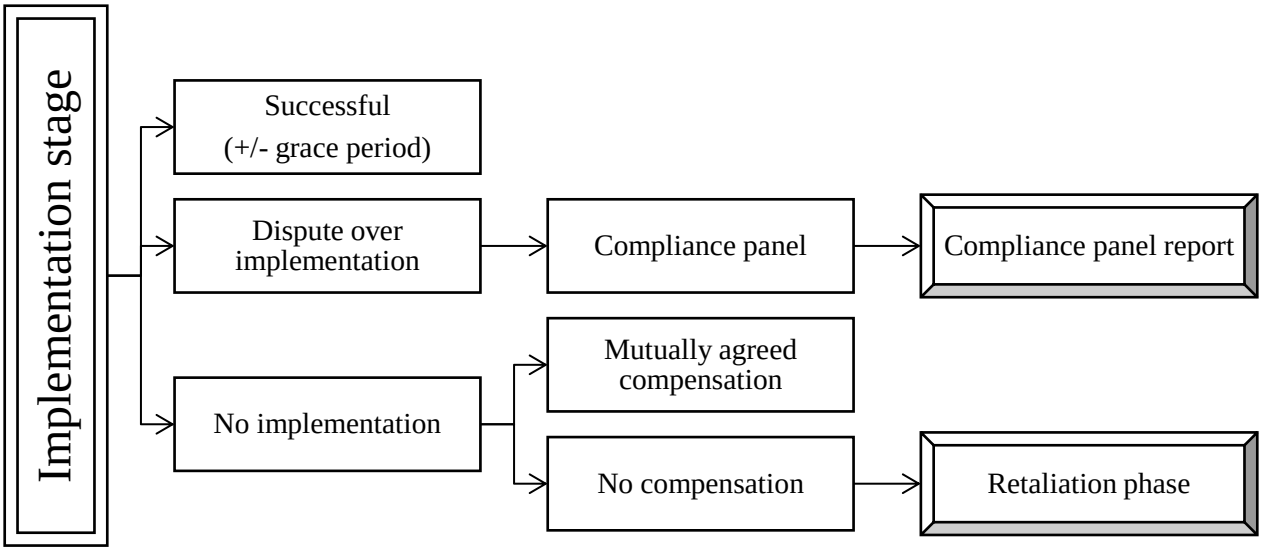
In the implementation stage, DSB supervises the implementation of panel and/or Appellate Body reports by the losing party. This means that the losing party must withdraw the improper trade measures found during the refereeing stage or that both parties must find a mutually satisfactory adjustment in compliance with WTO rules. The time-period for implementation is established within a meeting in no more than 30 days from the adoption of the panel/Appellate Body reports. At this meeting, the losing party informs the DSB about its intention to implement the rulings and about the time needed (WTO Secretariat, 2017). However, the losing party can benefit from a grace period that implies a reasonable time to bring its trade measures into compliance with WTO rules. The grace period can be determined in three ways: mutually agreed between parties, proposed by the losing party and approved by the DSB or established by a referee from the Appellate Body (Article 21.3 of the DSU). Generally, the grace period implies at most 15 months for implementation, but the Appellate Body can provide at most another 3 months as additional time (WTO Secretariat, 2012).

In case of dispute over implementation, either of parties can request a special panel. The compliance panel has 90 days to analyze the implementing process and the consistency with WTO rules of measures taken by losing party (WTO Secretariat, 2012). When the losing party fails to implement the rulings from panel/Appellate Body reports or the grace period expires, both parties negotiate a mutually agreed compensation in the form of an equivalent trade benefit such as tariff reductions or a trade benefit in an important sector of complainant exports. In case of no agreement on compensation within 20 days, DSB authorizes retaliation pending full implementation. The retaliation stage involves a permission for complainant to temporary suspend concessions and other WTO obligations in relation with the respondent (losing party). Thus, in less than 30 days after the grace period expiration, the DSB give permission for complainant to impose temporary trade countermeasures or sanctions against the respondent in order to compensate the losses incurred and to rebalance reciprocal trade benefits (WTO Secretariat, 2017). Each of the parties involved has the possibility to request arbitration when disagrees on retaliation form. In this case, the arbitration must end within 60 days and the arbitrator decision is accepted as final (WTO Secretariat, 2012). Figure 5 presents the entire procedure for implementation stage.

Figure 5. Reconciliation process. Implementation stage



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The retaliation stage is the final step of the reconciliation process, but implies the sternest consequences for non-implementing member. Trade barriers are economically harmful for both parties, making the retaliation phase an exception for a trade dispute. Thus, this phase is mostly avoided in trade disputes since the WTO is looking to achieve reconciliation between parties through more constructive methods.

3. The European Union's trade disputes

The EU member countries have become GATT or WTO members in several waves of accession. Belgium, Czechoslovakia, France, Luxembourg, Netherlands, and the United Kingdom are among the 23 founding members of GATT. At the same time, most of the EU member states have become GATT members before the WTO replaced GATT, starting with Denmark, Finland, Greece, Italy, and Sweden in 1950 and finishing with Slovenia in 1994. Only Bulgaria, the Baltic States and Croatia have become direct WTO members after 1995, the last being Lithuania in 2001.

Since the WTO replaced GATT, the EU had been involved in more than 400 trade disputes. However, in most of these disputes, the EU figures as third party, whereas 110 cases are as complainant and 93 cases as respondent. These 110 cases are the number of cases in which the entire EU was complainant, while the other 10 cases from Czech Republic, Denmark, Hungary and Poland are cases in which these countries were complainant before being member of the EU. A special attention is the case of Denmark, in which the complaint was made by Denmark in the respect of the

Faroe Islands. To these disputes are added those involving the EU member countries, most of them as respondent, according to Table 1.

Table 1. Trade disputes by the EU-27 and the member states

EU member	Cases as complainant	Cases as respondent	Cases as third party
Belgium	-	3	-
Croatia	-	1	-
Czech Rep.	1	2	-
Denmark	1	1	-
France	-	5	-
Germany	-	2	-
Greece	-	3	-
Hungary	5	2	2
Ireland	-	3	-
Italy	-	1	-
Lithuania	-	1	-
Netherlands	-	3	-
Poland	3	1	1
Portugal	-	1	-
Romania	-	2	-
Slovakia	-	3	-
Spain	-	3	-
Sweden	-	1	-
EU-27	110	93	216

Source: WTO (2021) and WTO (2023a), Disputes by member

Table 2 summarizes the cases in which the EU member states appear as complainant. Most of them are against other EU members before these countries became members of the EU. A special situation is trade dispute number DS469, where Denmark, in respect of the Faroe Islands requested consultations with the EU. At the same time, half of these trade disputes are finished by mutually agreed solution, whereas four are in consultations. As regarding the sector, most of these trade disputes had implied food products.

Table 2. Trade disputes by the EU member states as complainant

Case no	EU member	Respondent	Product	Request for consultations	Status
DS122	Poland	Thailand	Iron, Non-Alloy Steel and H Beams	6.04.1998	Mutually agreed solution on implementation on 21.01.2002
DS143	Hungary	Slovakia	Wheat	19.09.1998	*Panel established on 21.10.1998*

DS148	Hungary	Czech Rep.	Wheat	12.10.1998	*In consultations*
DS159	Czechia	Hungary	Steel products	21.01.1999	*In consultations*
DS235	Poland	Slovakia	Sugar	11.07. 2001	Mutually agreed solution on 11.01.2002
DS240	Hungary	Romania	Wheat and Wheat Flour	18.10.2001	Mutually agreed solution on 20.12.2001
DS256	Hungary	Turkey	Pet Food	3.05.2002	*In consultations*
DS289	Poland	Czech Rep.	Pig-Meat	16.04.2003	*In consultations*
DS297	Hungary	Croatia	Live Animals, Meat Products	9.07.2003	Mutually agreed solution on 30.01.2009
DS469	Denmark	European Union	Herring and Northeast Atlantic mackerel	4.11.2013	Mutually agreed solution on 21.08.2014

Source: WTO (2021) and WTO (2023a), Disputes by member

Table 3 summarizes the cases in which the EU member states appear as respondent, excluding the cases between the EU members presented in Table 2. The United States are the main complainant in most of the cases. More than a half of trade disputes in which the EU member states are respondent are ongoing, whereas 12 are in consultations and one in the panel stage. The United States are, also, the main complainant of cases in consultations. Special situation is the case DS347 with the United States where the panel had suspended its work for more than 12 months, leading to the lapse of the panel's authority for establishment. At the same time, there are cases in which the United States requested consultations with more EU member states at once, such those regarding the intellectual property rights (DS83, DS86, and DS125) or those related to income tax measures constituting subsidies (from DS127 to DS131).

Table 3. Trade disputes by the EU member states as respondent

Case no	EU member	Complainant	Sector	Request for consultations	Status
DS19	Poland	India	Automobiles	28.09.1995	Mutually agreed solution on 26.08.1996
DS35	Hungary	Argentina; Australia; Canada; New Zealand; Thailand; US	Agricultural products	27.03.1996	Mutually agreed solution on 30.07.1997
DS37	Portugal	United States	Patent production	30.04.1996	Mutually agreed solution on 3.10.1996
DS68	Ireland	United States	Computer equipment	14.02.1997	Appellate Body report adopted on 22.06.1998

DS80	Belgium	United States	Commercial telephone services	2.05.1997	*In consultations*
DS82	Ireland	United States	Copyright and neighboring rights	14.05.1997	Mutually agreed solution on 6.11.2000
DS83	Denmark	United States	Intellectual property rights	14.05.1997	Mutually agreed solution on 7.06.2001
DS86	Sweden			28.05.1997	Mutually agreed solution on 2.12.1998
DS125	Greece			4.05.1998	Mutually agreed solution on 20.03.2001
DS127	Belgium	United States	Income tax measures constituting subsidies	5.05.1998	*In consultations*
DS128	Netherlands				
DS129	Greece				
DS130	Ireland				
DS131	France				
DS133	Slovakia	Switzerland	Dairy Products and Cattle	7.05.1998	*In consultations*
DS173	France	United States	Flight management system	21.05.1999	*In consultations*
DS198	Romania	United States	Minimum import prices	30.05.2000	Mutually agreed solution on 26.09.2001
DS210	Belgium	United States	Rice	12.10.2000	Mutually agreed solution on 18.12.2001
DS316	France, Germany, Spain	United States	Large civil aircraft	6.10.2004	Implementation following compliance proceedings on 25.08.2020
DS347				31.01.2006	*Authority for panel lapsed on 7.08.2007*
DS408	Netherlands	India	Generic drugs	11.05.2010	*In consultations*
DS409		Brazil		12.05.2010	*In consultations*
DS443	Spain	Argentina	Biodiesels	17.08.2012	*In consultations*
DS452	Greece, Italy	China	Renewable energy	5.11.2012	*In consultations*
DS600	France, Lithuania	Malaysia	Palm oil and biofuels	15.01.2021	*Panel composed on 29.07.2021*

Source: WTO (2021) and WTO (2023a), Disputes by member

Since the WTO replaced GATT, the EU had been involved in 110 cases as complainant, according to Table 4. More than a half of these trade disputes had been finished and almost half of them are ongoing. At the same time, in 14 cases, the EU and the second party reached a mutually agreed solution and 33 ongoing cases are still in consultations stage. The United States are the main

respondent with 35 cases, most of them being finished and nine in consultations. The BRICS countries (excepting South Africa), and other countries from Asia, North America and Latin America follow the American economy in terms of number of cases.

Table 4. Trade disputes by the EU as complainant

Respondent	Number of cases	Status			
		Finished	Mutually agreed solution	Ongoing	In consultations
United States	35	21	4	14	9
China	11	6	1	5	2
India	11	3	1	8	5
Argentina	8	4	-	4	3
Canada	6	5	1	1	1
Japan	6	3	3	3	3
Russia	6	2	-	4	1
Brazil	5	2	-	3	3
South Korea	4	4	1	-	-
Chile	3	3	1	-	-
Indonesia	3	2	1	1	-
Mexico	3	1	-	2	2
Colombia	2	1	-	1	-
Australia	1	1	1	-	-
Egypt	1	-	-	1	1
Pakistan	1	-	-	1	1
Philippines	1	1	-	-	-
Thailand	1	-	-	1	1
Turkey	1	1	-	-	-
United Kingdom	1	-	-	1	1
TOTAL	**110**	**59**	**14**	**51**	**33**

Source: WTO (2021) and WTO (2023a), Disputes by member

Among the ongoing cases, some trade disputes need special attention. For example, DS591 against Colombia regarding the anti-dumping duties on frozen fries from Belgium, Germany and the Netherlands. Although, there is a final decision regarding this case, both the EU and Columbia had agreed for additional time for implementation until November 2023. At the same time, some cases are at the panel stage. The EU made a panel request in the case D120 against India, whereas a compliance request was made in the case DS577 against the United States regarding the anti-dumping and countervailing duties on ripe olives from Spain. In addition, the panel had been established for DS214 (against the US on steel products), for DS462 (against Russia on recycling fee), for DS502 (against Colombia on spirits), and for DS509 (against China on raw materials). In some cases, the panel had been composed, such as trade disputes against the United States (DS317 on large civil

aircraft) and against China (DS610 and DS611 on goods and intellectual property rights). In the case DS582 against India regarding the ICT sector, the panel report had circulated to the DSB, whereas the panel report is under appeal in the case DS592 against Indonesia on raw materials (WTO, 2023a). It is assumed that all these cases will be resolved eventually, either by mutually agreed solution, either by successful implementation through adopted reports.

On the other hand, some trade disputes are blocked since the panel had suspended its work for more than 12 months, leading to the lapse of the panel's authority for establishment. There are six cases in this situation, two against the United States (DS38 and DS88), two against Russia (DS475 and DS604), one regarding Argentina measures affecting textiles, clothing and footwear (DS77), and one (DS352) against India related to wines and spirits (WTO, 2021; WTO, 2023a).

As respondent, the EU had been involved in 93 trade disputes, according to Table 5. More than 56% of these trade disputes had been finished and 41 of cases are ongoing. At the same time, in 24 cases, the EU and the second party reached a mutually agreed solution and 26 ongoing cases are still in consultations stage. The United States are the main complainant with 20 cases, most of them being finished and three in consultations. Among the American cases, there are three trade disputes with multiple complainants. For example, trade case DS16 involves the United States, Guatemala, Honduras and Mexico as complainants. All of these countries appear in disputes DS27 and DS158 as complainants, to which is added Ecuador for the first and Panama for the latter.

Table 5. Trade disputes by the EU as respondent

Complainant	Number of cases	Status			
		Finished	Mutually agreed solution	Ongoing	In consultations
United States	20*	11	7	9	3
Canada	9	6	4	3	2
Brazil	8	4	-	4	4
India	7	3	1	4	4
Argentina	6	2	1	4	4
China	5	3	1	2	1
Indonesia	5	2	-	2	-
Russia	4	-	-	4	-
Thailand	4	2	-	2	2
Norway	3	2	1	1	1
South Korea	3	2	1	1	1
Australia	2	2	-	-	-
Chile	2	2	2	-	-
Panama	2	2	2	-	-
Peru	2	2	2	-	-
Colombia	1	1	1	-	-

Faroe Islands	1	1	1	-	-
Japan	1	1	-	-	-
Malaysia	1	-	-	1	-
New Zeeland	1	1	1	-	-
Pakistan	1	1	-	-	-
Saudi Arabia	1	-	-	1	1
South Africa	1	-	-	1	1
Taiwan	1	1	-	-	-
Turkey	1	1	-	-	-
Uruguay	1	-	-	1	1
TOTAL	**93**	**52**	**24**	**41**	**26**

* In three cases appear more complainants, including Ecuador, Guatemala, Honduras, Mexico, and Panama.
Source: WTO (2021) and WTO (2023a), Disputes by member.

Among the ongoing cases, some trade disputes need special attention. For example, DS316 requested by the United States regarding large civil aircraft. Although, there is a final decision regarding this case, the EU has decided to appeal some issues of law and legal interpretations developed by the compliance panel. At the same time, some cases are at the panel stage. The panel had been established for five cases, such as DS9 (requested by Canada on cereals), for DS260 and DS389 (requested by the United States on steel and poultry meat products), for DS474 (called by Russia regarding anti-dumping measures), and for DS616 (requested by Indonesia on steel products). In two cases (DS593 and DS600) requested by Indonesia and Malaysia regarding the palm oil and biofuels, the panel had been composed. In addition, the panel reports are under appeal in the cases DS476 and DS494, both requested by Russia regarding anti-dumping measures and energy sector (WTO, 2023a).

On the other hand, some trade disputes are blocked since the panel had suspended its work for more than 12 months, leading to the lapse of the panel's authority for establishment. There are two cases in this situation, one requested by the United States (DS347 on large civil aircraft), and one regarding price comparison methodologies requested by China (DS516). At the same time, in the case DS521 called by Russia regarding steel products, the panel work had been suspended. Moreover, in two cases (DS291 and DS559) requested by the United States against the European Union, both parties had agreed to resort to arbitration and, after its composition, to suspend it immediately and indefinitely (WTO, 2023a).

4. The EU's trade disputes on energy sector

The European Union had been involved in ten trade disputes regarding biofuels and energy sector, as it can be seen in Table 6. In most of them, the European economy appears as respondent,

while the EU has only one case as complainant against the United Kingdom. In some cases, other EU member states appear alongside the EU as respondents, such as Spain (case DS443), Greece and Italy (DS452), and France and Lithuania (DS600). Most complaints came from Argentina and Indonesia, while China, Russia, and Malaysia have one case each against the EU. As regarding the sector or the product involved, five cases are related to biodiesels, three about energy sector and two about oil palm crop-based biofuels. In terms of status, five cases are still in the consultations stage, in two cases the panel had been composed, whereas the panel report is under appeal for case DS476 requested by Russia. On the other hand, only two cases are finished after the successful implementation of panel or Appellate Body reports.

Table 6. Trade disputes on energy sector

Case no	Complainant	Respondent	Sector/Product	Request for consultations	Status
DS443	Argentina	EU, Spain	Biodiesels	17.08.2012	*In consultations*
DS452	China	EU, Greece, Italy	Renewable energy generation	05.11.2012	*In consultations*
DS459	Argentina	EU	Biodiesels	15.05.2013	*In consultations*
DS473	Argentina	EU	Biodiesels	19.12.2013	Successful implementation
DS476	Russia	EU	Energy sector	30.04.2014	*Panel report under appeal*
DS480	Indonesia	EU	Biodiesels	10.06.2014	Successful implementation
DS593	Indonesia	EU	Palm oil and oil palm crop-based biofuels	09.12.2019	*Panel composed on 20.11.2020*
DS600	Malaysia	EU, France, Lithuania	Palm oil and oil palm crop-based biofuels	15.01.2021	*Panel composed on 29.07.2021*
DS612	EU	United Kingdom	Low Carbon Energy Generation	28.03.2022	*In consultations*
DS618	Indonesia	EU	Biodiesels	15.08.2023	*In consultations*

Source: WTO (2021) and WTO (2023a), Disputes by member.

Starting with trade disputes on *biodiesels*, Argentina had requested three cases and Indonesia two, whereas in one case Spain appears as respondent alongside the European Union. More than a half of these trade disputes are in consultations. In the case DS443, Argentina had contested the Spanish Ministerial Order regarding the allocation of quantities of biodiesel. This order affects the Argentinian exports of biodiesels, being a national measure to achieve the mandatory targets regarding renewable energy according to the EU regulatory framework related to energy from renewable sources. Although Argentina had requested for a panel establishment, the DSB had

deferred its request and the case remained in the consultations stage since December 2012 (WTO, 2023b). Further, in the case DS459, Argentina had requested consultations with the EU on May 2013 regarding two types of measures that affects its exports of biodiesels. On the one hand, Argentina had contested that the European economy had taken measures for promoting the use of renewable energy and for adopting a mechanism for controlling and reducing greenhouse emissions. On the other hand, Argentina had disagreed the EU's measures for support schemes in the biodiesel sector. As in the previous case, this trade dispute remained at the consultation stage (WTO, 2023c). Nevertheless, both cases have an example of a successful concluded trade dispute; the case DS473 started in December 2013 by Argentina against the EU. In this case, Argentina had contested the EU imposition of provisional and definitive anti-dumping on biodiesel, affecting its exports. At the same time, Argentina had complained the determination method of dumping margins considering the adjustment of production and sale costs for biodiesel. Since the both parties had not reached a mutually agreed solution, the DSB had established a panel in April 2014, being composed in June 2014. The panel report was released in March 2016, whereas both parties had decided to appeal the report in May. In October 2016, the Appellate Body had released its report through which upheld the Panel's findings, according to which the EU acted inconsistently with GATT/ WTO agreements. Both the EU and Argentina had decided to implement the rulings and recommendations in this dispute, although both asked for additional time in two rounds. After one year, the EU had informed the DSB about the full implementation of the rulings and recommendations through annulling the anti-dumping measure imposed (WTO, 2023d). A similar case is DS480 started in June 2014, in which Indonesia had complained the EU about the same anti-dumping measures on biodiesel imports. Failing a mutually agreed solution, the DSB had decided to establish the panel in August 2015 and to compose it in November. During its session, the panel had suspended its work in the waiting of a decision regarding the case DS473 between Argentina and the EU. Having a precedent in the case DS473, the panel had finished its report in January, being adopted in one month. The panel findings were similar with those from DS473, while the EU and Indonesia had agreed on an implementation period of 8 months. Therefore, in November 2018, the EU informed the DSB about the complete implementation following the annulment of anti-dumping measure imposed. The most recent trade dispute, at the time of writing, is the case DS618 between the EU and Indonesia. Again, Indonesia had complained the EU about the European measures on Indonesian exports of biodiesels, namely the definitive countervailing measures imposed on biodiesel imports and how the EU investigation leading to their imposition (WTO, 2023f).

As regards the *palm oil and oil palm crop-based biofuels*, the EU had decided in 2018 to eliminate palm oil by 2021 and to limit the consumption levels of palm oil-based biofuels (Michalopoulos, 2018). This decision had led to two trade disputes of Indonesia and Malaysia against the EU, both being ongoing. The case DS593 had started in December 2019, but both Indonesia and the EU had not reached a mutually agreed solution. Thus, the DSB had decided to establish a panel in July 2020, which had been composed in November (Mayr *et al.*, 2021). The panel had extended the deadline for its report twice to the third quarter of 2023, invoking the complexity of the legal issues. The second case is similar. In DS600, started in January 2021, Malaysia had complained the EU, France and Lithuania regarding the same measures imposed on palm oil and oil palm crop-based biofuels. Similar with DS593, the parties had not reached a mutually agreed solution, leading to an established panel in May 2021 and a composed one in July 2021. The decision was similar; the panel had extended the deadline for its report twice to the third quarter of 2023, invoking the complexity of the legal issues. It is assumed that both cases will be solved at the same time (WTO, 2023g).

In the case of the energy sector, there are two trade disputes in which the EU is respondent and one in which it is complainant. In DS452, China had complained against the EU, Italy and Greece regarding the feed-in tariff programs as domestic restrictions on renewable energy generation sector (WTO, 2023a). Although this case is still in consultations, it has a precedent in respect of the case DS476 between Russia and the EU. As an effect of Euromaidan and in the context of signing the Ukraine-EU Association Agreement, Russia had complained the EU in April 2014 about trading measures on energy sector through the `Third Energy Package`. This legislative package aims to liberalize and integrate Europe's gas and electricity markets, including the ownership unbundling in order to separate the generation and sale operations from their transmission networks. Failing a mutually agreed solution, the DSB had decided to establish the panel in July 2015 and to compose it in March 2016. The panel report released in August 2018 was more in favor of the EU. However, both parties had decided to appeal the report in September. The Appellate Body had extended the deadline for this appeal, considering the size of the panel report, the complexity of the case and the shortage of the staff (WTO, 2023e).

On the other hand, the only trade dispute on energy sector in which the EU appears as complainant is the case DS612 against the United Kingdom. Following the Brexit, this trade dispute had started in March 2022 when the EU had complained about the allocation process of 'Contracts for Difference' in low carbon energy generation. The case is still in consultation stage since there (WTO, 2023a).

Conclusions

Despite its systematic and legitimacy problems regarding the panel competence, transparency, cases reported unsolved, the compliance with deadlines and their extended, and consistency between domestic and WTO legislations, the WTO dispute settlement system is still an effective tool for achieving reconciliation between WTO members. Although the dispute settlement involves several stages, the main purpose is to help the member states for achieving a mutually agreed solution, regardless the phase of trade dispute. In practice, some cases are complex, calling for a more active involvement of the investigative bodies, more time and going through all the steps, even the unpleasant ones, regarding the application of retaliatory measures.

One of the paper findings is that most of the EU trade disputes are finished, either by mutually agreed solution, either by successful implementation through adopted reports. At the same time, the United States are the main complainant and the main respondent in most of the cases involving the European Union or a member state.

Another finding is that cases involving the EU can be found at all stages of the trade dispute settlement, fewer at the retaliation phase. Although most of them are concluded, most often through mutually agreed solutions, there are a large number of cases in the consultation stage. Some cases are at the panel stage, whereas the panel is either established, composed or one of the parties has requested the creation of a panel. On the other hand, there are cases in which the panel had suspended its work for more than 12 months, leading to the lapse of the panel's authority for establishment.

As regards the energy sector, the European Union is involved in ten trade disputes so far, most of them as a respondent and still in the consultation phase. Argentina, Indonesia, Russia, China and Malaysia are the complainants in these cases, while the sectors involved are related to biodiesel, renewable energy generation and oil palm-based biofuels. Although most of these cases are still pending, there are two cases where the rulings and recommendations have been fully and successfully implemented, which can be considered as examples of good practice for other cases.

These findings are important and necessary to create further directions of study and new approaches regarding the EU's trade disputes and the dispute settlement process. As regarding the WTO trade dispute settlement, it is necessary to understand and to be aware by the vulnerabilities of this process as well as the need for openness in terms of new and more efficient tools to improve it. The WTO bodies should consider these vulnerabilities as new opportunities and ways to update and improve the quality of the trade dispute settlement. As regarding the EU, European bodies need to anticipate the increased risk of trade disputes escalating, particularly in key areas such as the energy sector. In addition, the European institutions should also try to prevent the risk of loss of control in

major trade disputes and try to resolve disputes at the consultation stage, especially in cases with higher economic and political stakes. To this end, the EU institutions need to look ahead and design their decisions according to their expectations of how their opponents will behave. At the same time, complex trade barriers for sensitive economic sectors should be avoided as there is a greater risk that the opposing side will demonstrate the illegitimacy of these measures, although the EU institutions might hope that these are difficult to prove. These aspects might be useful for understanding the implications for the EU member states, policymakers and public in terms of trade.

Acknowledgement: This work was co-funded by the European Social Fund, through Operational Programme Human Capital 2014-2020, project number POCU/993/6/13/153322, project title "Educational and training support for PhD students and young researchers in preparation for insertion into the labor market".

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